

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the following remarks.

Appreciation is expressed to Examiner Truong for the indication that Claims 3, 6-8, 10 and 15-18 would be allowable if rewritten in independent form.

By way of this Amendment, Claims 19-22 directed to the non-elected invention, are cancelled. Also, Claims 1, 2, 5 and 11 are amended to address the points raised on page three of the Official Action. Accordingly, withdrawal of the claim rejection based on the second paragraph of 35 U.S.C. §112 is respectfully requested.

The Official Action sets forth two different anticipatory rejections of independent Claim 1, and various dependent claims. One of those rejections is based on the disclosure in U.S. Patent No. 4,738,077 to *Wakabayashi et al* and the other is based on the disclosure in U.S. Patent No. 3,220,161 to *Lohse et al*. *Wakabayashi et al* discloses an apparatus for forming containers that includes a first folding member 30 formed as a vertically movable flat plate 32. The plate 32 is a generally V-shaped plate, as illustrated in Figs. 8 and 9, and is adapted to be moved downwardly when a container 11 is properly positioned below the plate 32. The downward movement of the plate 32 causes the sides of the top end of the container to be folded inwardly. In addition, the apparatus includes a second folding member 31 defined by a pair of pivoting flat plates 34, 35 arranged on opposite sides of the vertically movable plate 32. The pieces 34, 35 are attached to be pivoted inwardly as generally indicated by the dotted outline configuration in Fig. 3 to press the panels 16 of the container downwardly and inwardly to fold the panels 16 over the panels

15. The plates 34, 35 are pivoted through operation of a pair of connecting rods 66, 67 connected to a respective arm 62, 64 on which the plates 34, 35 are mounted.

The Official Action takes the position that the features 31, 34 disclosed in *Wakbayashi et al* correspond to the claimed forming flaps, while the connecting rods 66, 67 correspond to the claimed sealing heads. However, original Claim 1 recites that the apparatus comprises at least one pair of halves reciprocally movable between an open position and a closed sealing position for sealingly closing the open end of the package. In this regard, the connecting rods 66, 67 disclosed in *Wakbayashi et al* do not sealingly close the open end of the container.

Nevertheless, the original Claim 1 wording is changed to define the originally claimed subject matter in a slightly different manner. That is, Claim 1 is amended to set forth that one of the sealing halves comprises sealing means for sealingly closing the open end of the package. Quite clearly, the connecting rods 66, 67 disclosed in *Wakbayashi et al* are not sealing means for sealingly closing the open end of the container. It is thus respectfully submitted that independent Claim 1 is patentably distinguishable over the disclosure in *Wakbayashi et al*.

Lohse et al discloses an apparatus for closing bags of heat-sealable packaging material. The apparatus includes two pairs of folding tools 41, 41, 42, 42. The folding tools 42 are adapted to be inserted into the open end of the bag and moved towards one another, while the folding tools 41, 41 tuck the narrow sides of the bag inwardly to form gussets in the bag. In addition, *Lohse et al* discloses tacking jaws 101, 101 that contact the bag with the closure folds for a short period of time so that the folds are smoothed and tacked by pressure and heat.

The Official Action observes that the folding tools 41, 41 disclosed in *Lohse et al* correspond to the claimed forming flaps, while the tacking jaws 101, 101 correspond to the claimed halves that are movable between an open position and a closed sealing position for sealingly closing the open end of the package.

One difference between the apparatus at issue here and the disclosure in *Lohse et al* is that the forming flaps are directly acted upon by the sealing half during operation of the apparatus. That is, as now set forth in Claim 1, each forming flap is directly pushed by the associated sealing half during at least part of the reciprocal movement of the associated sealing half to pivotally move the forming flap toward the package as discussed beginning in line 20 of column 16 of the present application. In the case of the apparatus disclosed in *Lohse et al*, the folding tools 41, 41 are not directly pushed by the tacking jaws 101, 101 during at least part of the movement of the tacking jaws 101, 101. For at least this reason, it is respectfully submitted that independent Claim 1 is patentably distinguishable over the disclosure in *Lohse et al*.

New dependent Claims 23-25 define additional distinguishing features and characteristics associated with the claimed apparatus at issue here. For example, Claim 23 recites the pair of package engaging members adapted to engage opposite sides of the package, with each of the forming flaps being mounted for pivoting movement relative to a respective one of the package engaging members. In addition, Claim 24 recites that each of the package engaging members is U-shaped, while Claim 25 recites that each forming flap is pivotally mounted on the respective package engaging member. These features further distinguish over the disclosures in *Wakabayashi et al* and *Lohse et al*.

New independent Claim 26 defines that the apparatus for sealing a package having an open end comprises at least one pair of sealing halves reciprocally movable between an open position and a closed sealing position, with one of the halves comprising sealing means for sealingly closing the open end of the package while the pair of sealing halves are in the closed sealing position. In addition, forming means for forming the package adjacent the open end of the package comprises a pair of forming flaps positioned below the sealing means. Each forming flap is associated with one sealing half and possesses a first end pivotally attached to a support and a second end adapted to follow the reciprocal movement of the associated sealing half. During the movement of the sealing halves towards the closed sealing position, the forming flaps press opposing portions of the package towards each other.

This arrangement is desirable from the standpoint of aseptic considerations where it is preferable that moving parts (e.g., the forming flaps) not be positioned above the opening of the package since this can lead to contamination of the package. Also, in the presence of a sterile laminar airflow from the top to the bottom of the filling machine and past the forming and sealing arrangements, it is desirable to position the forming flap below the sealing means so that the air flow is generally not disturbed and sterility is not significantly jeopardized. Further, any possible splash from the product being filled into the package can end up on the surrounding equipment, and such splashed product should preferably not be permitted to drip back into the package.

The claimed apparatus recited in Claim 26 differs from the disclosure in *Wakbayashi et al* at least because the connecting rods 66, 67 disclosed in

Wakbayashi et al are not sealing means that sealingly close the open end of the container. Also, Claim 26 recites that the forming flaps are positioned below the sealing means.

In *Lohse et al*, the disclosed folding tools 41, 41 are positioned above the tacking jaws 101, 101. Further, considering the nature of the purpose served by the folding flaps 41, 41 and the tacking jaws 101, 101 disclosed in *Lohse et al*, it would not have been obvious to reposition those features in the manner recited in independent Claim 26. It is thus respectfully submitted that independent Claim 26 is also allowable over the disclosure in *Lohse et al*.

For at least the reasons set forth above, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application the undersigned respectfully requests that he be contacted at the number indicated below.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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By:



Matthew L. Schneider
Registration No. 32814

P.O. Box 1404
Alexandria, VA 22313-1404
703 836 6620